

A

RAM PREETI YADAV

v.

MAHENDRA PRATAP YADAV AND ORS.

AUGUST 30, 2007

B

[S.B. SINHA AND H.S. BEDI, JJ.]

C

D

E

F

G

*Contempt of Court—Contemnor-candidate on the basis of withheld result of examination pursuing further studies and getting employment—Cancellation of result upheld by Supreme Court—However, Supreme Court observing that if rules permitted, the candidate could take the examination—Contemnor-candidate seeking permission to appear in the examination from the Examination Board—Contemnor-Secretary of the Board issuing certificate declaring the candidate having passed the examination—Certificate subsequently cancelled—Cancellation unsuccessfully challenged by the candidate—Contempt petition alleging disobedience of the order of Supreme Court—Held: Contemnors committed contempt of Court—Contemnor-candidate took undue advantage of the observations of Supreme Court—This amounts to interference with the order passed by the Court—Contemnor-Secretary acted contrary to law—Contempt of Courts Act, 1971—Constitution of India, 1950—Articles 129 and 142.*

**Respondent No.1-Contemnor had appeared in Intermediate Examination.His result was withheld. However a provisional marksheet was issued to him. On the basis of the provisional marksheet, he pursued his further studies and subsequently also got employed. The result of Intermediate Examination was cancelled. A Writ Petition challenging the order of cancellation was allowed by Single Judge of High Court. Petitioner herein filed special appeal, which was dismissed by Division Bench of High Court. In appeal, this Court by its order dated 3.9.2003 reversing the judgment of Single Judge of High Court, held that the result was liable to be set aside. The Court also observed that if the respondent No.1 was entitled to take the Intermediate Examination, he might be permitted as per law.**

**Respondent No.1, taking advantage of the observation in the order dated 3.9.2003, filed an application to the Secretary of the Examination Board-Contemnor (respondent No.2) seeking permission to appear in the**

H

examination as a private candidate. No action was taken on that. Respondent No.1 filed a Writ Petition wherein High Court directed the Secretary of the Board to pass suitable order on the application in accordance with law. Respondent No.2-Contemnor, relying on the direction of the High Court, issued a certificate in terms whereof respondent No.1 was said to have passed the Intermediate Examination. However, the said certificate was consequently cancelled. Legality of the cancellation of the certificate was questioned by respondent No. 1 before High Court by filing Writ Petition, and the same was dismissed. Thereafter the present contempt petition was filed by the petitioner.

Allowing the petition, the Court

**HELD:** 1. There does not exist any rule permitting a candidate to appear at an examination at a later point of time and that too as a private candidate. Contemnor-respondent No.2 being a Secretary of the statutory board is expected to act in accordance with law. Before acting on the purported application filed by Contemnor-respondent No.1, he should have applied his mind to the extant rules. Application of mind on his part was also necessary on the purport of the order dated 03.09.2003 passed by this Court.

[Paras 4 and 12] [593-G; 596-F-G]

2. On a plain reading of the order dated 03.09.2003, it would be evident that the fraud practiced by the alleged Contemnor-respondent No.1 was not condoned by this Court. His result was declared to be set aside. An observation, however, was made only to the effect that in the event, any rule permits Contemnor-respondent No.1 to appear at the examination, the Board would be free to take a decision thereon. It now stands admitted that there does not exist any rule in terms whereof, Contemnor-respondent No.1 could appear at the examination. Even otherwise his application was confined to only appearing at the examination. On what basis the certificate was granted has not been disclosed. It is not an ordinary mistake. The said certificate, if had not been withdrawn, would have restored the status of Contemnor- respondent No.1. He would have got back his service. He would have claimed even other benefits from the College, where he had been serving. The conduct of Contemnor-respondent No.1 is, therefore, not free from blemish. He made a representation before this Court. The basis of said representation, it now transpires, is non-existent. What he could have done was to search out the relevant rule, which was applicable in this case. He filed a Writ Petition before the High Court only because no action was taken. He did not inform the High Court that there

**A** did not exist any rule. Therefore, the Court is of the opinion that Contemnor-respondent No.2 must have issued the certificate on extraneous consideration. Contemnor-respondent No.1 is a beneficiary of the said illegal and fraudulent certificate. It is not a case where apology tendered by the alleged Contemnors should be accepted. [Paras 13 and 14] [596-G-H; 597-A-E]

**B** 3. It cannot be said that the contempt petition is not maintainable against respondent No.1, as taking undue advantage of the observations made by this Court also amounts to interference with the order passed by this Court in imparting justice. It is well-settled that what cannot be done directly, cannot be done indirectly. [Paras 15 and 16] [597-E, F, G]

**C** 4. Apart from the provisions of the Contempt of Courts Act, this Court has a constitutional duty in terms of Article 129 as also Article 142 of the Constitution of India to issue such directions, as are necessary for the ends of justice. Contemnor-respondent Nos. 1 and 2 are guilty of commission of contempt of this Court. [Para 17] [597-G; 598-A]

**D** CIVIL APPELLATE JURISDICTION: Contempt Petition No. (C) 512 of 2004.

IN

C.A. No. 4034 of 2001.

**E** Y.P. Singh, C. Sidharth, P. Purnima, N.B. Aggarwal and Debasis Misra for the Petitioner.

**F** Dinesh Dwivedi, Shirish Kr. Misra, Z.K. Faizan, B.U. Burqi, Goodwill Indeevar, Niranjana Singh, K.L. Janjani and Kamakshi S. Mehlwal for the Respondents.

The Judgment of the Court was delivered by

**G** **S.B. SINHA, J.** 1. This application for initiation of a contempt proceeding has been filed for alleged disobedience of this Court's order dated 03.09.2003, relevant portion whereof reads as under :

“We are also unable to issue any direction to the first respondent to allow the third respondent to sit at the Intermediate Examination at this stage; having regard to the fact that relevant rules in this regard have not been placed. We may, however, observe that if he is entitled

**H**

to take the said Examination in law, he may be permitted.”

2. Respondent No.1 herein appeared as a private candidate in the Intermediate Examination conducted by U.P. Board of High Schools & Intermediate Education from Janta Inter College, Azamgarh (U.P.). His result was withheld. A provisional mark-sheet was purported to have been issued to him without showing that his result for Intermediate Examination had been withheld. On the basis of the said purported provisional mark-sheet, he pursued further studies and completed his Graduation as also Post Graduation. He was also employed as a teacher. The Principal of the College informed him that his result in the Intermediate Examination has been cancelled. Questioning the said order, a writ petition was filed. The said writ petition was allowed by a learned Single Judge of the High Court. Aggrieved, the petitioner herein preferred a special appeal before a Division Bench which was summarily dismissed. Petitioner herein approached this Court under Article 136 of the Constitution of India. In Civil Appeal No. 4034 of 2001 arising out of the said special leave petition, this Court in its judgment dated 03.09.2003, while allowing the same made the aforementioned observations.

3. Indisputably, taking advantage of the said observations, Respondent-Contemnor No. 1 filed an application on 28.09.2003 before the Contemnor-Respondent No.2 with a prayer to permit him to appear at the Intermediate Examination as a private candidate. No action was taken thereupon. He filed a writ petition before the Allahabad High Court which was marked as CMWP No. 2088 of 2004. The same was finally disposed of, directing :

“Having heard Sri S.K. Yadav, learned counsel for the petitioner as well as learned Standing Counsel appearing for the State-Respondent nos. 1 and 2 and on perusal of the record, this writ petition is disposed of with a direction to the Secretary, U.P. Board of High Schools and Intermediate Education, Allahabad, Respondent no. 2, to pass suitable order on the application of the petitioner dated 28.09.2003 in accordance with law as expeditiously as possible preferably within a period of two months from the date of filing of a certified copy of this order along with a copy of the application dated 28.09.20-03 before the said Respondent no. 2.”

4. It is not in dispute that there does not exist any rule permitting a candidate to appear at an examination at a later point of time and that too as

A a private candidate.

B 5. Relying on or on the basis of the said purported observations by the High Court of Allahabad, a certificate was issued by Contemnor-Respondent No.2 on or about 14.05.2004, in terms whereof Respondent No. 1 is said to have passed the said Intermediate Examination and was placed in Second Division. Individual marks in individual subjects, however, were not assigned.

6. It, however, appears that the said certificate was cancelled by an order dated 22.11.2004. A notice, in this behalf, was also published in the newspaper, which is in the following terms :

C “General Public is informed that the certificate No. INT-002557 for Intermediate Examination for the Year of 1984 issued earlier to the examinee Mahendra Pratap Yadav bearing Roll No. 575203 - Dist. Ajamgarh is cancelled.

D Use of the cancelled certificate will be illegal and will be punishable offence.”

E 7. Legality of the said order was questioned by Contemnor-Respondent No.1 before the Allahabad High Court by filing a writ petition, which was marked as CMWP No.20121 of 2004. By reason of a judgment and order dated 06.08.2004, the High Court dismissed the said writ petition, stating :

F “...Taking advantage of observations of the Supreme Court that he may be permitted to appear in intermediate examination, the petitioner made a representation to the Madhyamik Shiksha Parishad and thereafter filed a writ petition no. 20088/2004 which was disposed of on 22.1.2004, directing the Board to decide his representation.

G Apparently without look into the order of Supreme Court and without considering the concluded fact that the petitioner's result of intermediate examination was cancelled on 6.1.85 by Madhyamik Shiksha Parishad passed an order was made by the Deputy Secretary of the Board directing that the petitioner's result of 1984, examination which was withheld should be declared. This order in my opinion is wholly without jurisdiction inasmuch of the finding that the petitioner's result was cancelled was recorded by the Supreme Court. The Supreme Court had only observed that if he is entitled to take the examination,

H

he may be permitted to appear. A

It is admitted to the petitioner that he did not appear in the examination again and is again trying to play fraud with the system by making false representation i.e. result should be declared. The District Inspector of the Schools has found that the Supreme Court had dismissed the matter and thus the petitioner is not entitled to any benefit of reinstatement in service and payment of salary and other service benefits. B

The petitioner cannot be permitted to pollute the system any further. With the finding of fraud concluded against him by Supreme Court that he is not entitled to any equitable relief from this Court. C

The writ petition is accordingly dismissed with cost of Rs.10,000/- of which shall be recovered by District Magistrate, Azamgarh from the petitioner. The cost shall be recovered within three months and sent to the Registrar General of this Court for appropriate to the account of Legal Aid Authority of this Court." D

8. The contempt petition thereafter was filed on or about 09.08.2004.

9. Mr. Y.P. Singh, learned counsel appearing on behalf of the petitioner, would submit that the aforementioned conduct on the part of Contemnor-Respondent Nos.1 and. 2, would clearly show that they had deliberately and intentionally flouted the order of this Court. E

10. Mr. Dinesh Dwivedi, learned Senior Counsel appearing on behalf of Contemnor-Respondent No. 2, submitted that although a mistake was committed by his client, but the same stood rectified by a letter dated 22.11.2004, addressed to the Head Master/Principal of Janta Higher Secondary School, as would appear from the following : F

"By cancelling the result of 1984 Intermediate Examination of Student Mahendra Pratap Yadav bearing Roll No. 575203 in W.B. List. The mark sheet and certificate of the examinee had been sent to you vide office letter no. Confidential/ 3,4,5, High School/Inter/Head Quarter / 47 dated 11.03.2004 and letter no. SEE/Certificate/Inter/191 dated 19.03.2004. G

In compliance of the order passed by the Hon'ble High Court in H

**A** Petition No. 4034 of 2001 and Petition No. 20121/2004 dated 21.05.2004, the decision was taken in the meeting of the Examination Board held on 20.11.2004 that the result of Shri Mahendra Pratap Yadav bearing Roll No. 575203 examinee of Intermediate Examination 1984 should be immediately cancelled and the original mark sheets and certificate of Intermediate examination 1984 issued to him by the Board should be returned immediately as per the requirement legal proceedings should be initiated for obtaining mark sheet and certificate. The information about the decision of the committee should be immediately sent to the concerned persons by the special messenger.

**B**

**C** Therefore direction is given to you kindly make the District Inspector of School Ajamgarh available after obtaining the original mark sheet and certificate from the Examinee by making the concerned student aware about the said decision."

**D** It was urged that the apology offered by the alleged Contemnor-Respondent No. 2 may be accepted by this Court.

**E** 11. The learned counsel appearing on behalf of Contemnor-Respondent No. 1, however, urged that the contempt petition is not maintainable as this Court in its order dated 03.09.2003 having not issued any direction and, thus, the question of violation thereof would not arise. It was argued that direction, if any, having been made in favour of Contemnor-Respondent No.1, the proceeding is not maintainable. It was also contended that Contemnor-Respondent No. 1 merely asked for permission to sit in the examination. If the Board had granted a certificate, he is not responsible therefor.

**F** 12. We have been addressed on the conduct of Contemnor-Respondent Nos. 1 and 2. Contemnor-Respondent No. 2 being a Secretary of the statutory board is expected to act in accordance with law. Before acting on the purported application filed by Contemnor-Respondent No.1, he should have applied his mind to the extant rules. Application of mind on his part was also necessary on the purport of the order dated 03.09.2003 passed by this Court.

**G**

**H** 13. On a plain reading of the said order, it would be evident that the fraud practiced by the alleged Contemnor-Respondent No. 1 was not condoned by this Court. His result was declared to be set aside. The judgment of the Allahabad High Court was expressly reversed. An observation, however, was made only to the effect that in the event, any rule permits Contemnor-

Respondent No. 1 to appear at the examination, the Board would be free to take a decision thereon. It now stands admitted that there does not exist any rule in terms whereof, Contemnor-Respondent No. 1 could appear at the examination. Even otherwise his application was confined to only appearing at the examination. On what basis the certificate was granted has not been disclosed. It is not an ordinary mistake, as was submitted by Me. Dwivedi. The said certificate, if had not been withdrawn, would have restored the status of Contemnor-Respondent No. 1. He would have got back his service. He would have claimed even other benefits from the College, where he had been serving. The conduct of Contemnor-Respondent No. 1 is, therefore, not free from blemish. He made a representation before this Court. The basis of said representation, it now transpires, is non-existent. What he could have done was to search out the relevant rule, which was applicable in this case. He filed a writ petition before the High Court only because no action was taken. He did not inform the High Court that there did not exist any rule. We, therefore, are of the opinion that Contemnor-Respondent No. 2 must have issued the certificate on extraneous consideration. Contemnor-Respondent No. 1 is a beneficiary of the said illegal and fraudulent certificate.

14. The certificate was issued on 14.05.2004. The decision had been taken only by the Examination Board to cancel the said certificate. We, therefore, are of the opinion that it is not a case where apology tendered by the alleged Contemnors should be accepted.

15. Submission of the learned Advocate appearing on behalf of Contemnor-Respondent No. 1 that the contempt petition is not maintainable is not correct. Although no direction had been issued by this Court, evidently the earlier certificate was directed to be cancelled. If that be so, Contemnor-Respondent No. 1 could not have been indulged in any act which would amount to act of camouflage of the record thereof. Taking undue advantage of the observations made by this Court also amounts to interference with the order passed by this Court in imparting justice.

16. It is well-settled that what cannot be done directly, cannot be done indirectly.

17. Apart from the provisions of the Contempt of Courts Act, this Court has a constitutional duty in terms of Article 129 as also Article 142 of the Constitution of India to issue such directions, as are necessary for the



**A** ends of justice. We, therefore, are of the opinion that Contemnor-Respondent Nos. 1 and 2 are guilty of commission of contempt of this Court.

**B** 18. However, having regard to the facts and circumstances of this case, we are of the opinion that the interest of justice would be subserved, if both of them are directed to pay a fine of Rs.2,000/- each. They shall deposit the amount of fine in the Registry of this Court within four weeks from date, failing which appropriate action shall be taken.

**C** 19. Contemnor-Respondent Nos. 3 and 4 admittedly are not parties to the aforementioned order. Rule against them is discharged; while making the rule absolute against Contemnor-Respondent Nos. 1 and 2.

20. This Petition is allowed with the aforementioned directions.

K.K.T.

Contempt Petition allowed.